

JAN 29 2014

JULIA CONNOLY CLERK
BY: 
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

This case was referred pursuant to 28 U.S.C. § 636(b)(1)(B) to the Honorable Robert S. Ballou, United States Magistrate Judge. The Magistrate Judge has filed a report recommending that the court deny the government's motion to dismiss (Docket No. 121) and grant in part and dismiss without prejudice in part the defendant's § 2255 motion (Docket No. 108). Objections to the report and recommendation have not been filed and the court, upon review of pertinent portions of the record, is of the opinion that the report should be adopted.

It is accordingly **ORDERED** and **ADJUDGED** that:

- 1) The Magistrate Judge's Report and Recommendation (Docket No. 132) is **ADOPTED**;
- 2) The government's motion to dismiss (Docket No. 121) is **DENIED**;
- 3) The defendant's § 2255 motion (Docket No. 108) is **GRANTED in part and DISMISSED WITHOUT PREJUDICE in part**; and
- 4) The defendant's criminal judgment order (Docket No. 99) is **VACATED**.

The Clerk is **DIRECTED** to prepare a new criminal judgment order, in every respect the same as the previous order except as to date of entry and, once entered, to enter a notice of appeal on behalf of the defendant.

It is further **ORDERED** and **ADJUDGED** that this § 2255 action is **STRICKEN** from the court's active docket.

ENTER: This January 29, 2014.



UNITED STATES DISTRICT JUDGE